August 16, 2005

Glen S. Matuoka
Assistant Director, Administration Division
Department of Technology Services
[Address Redacted]
Rancho Cordova, California 95741-1810

Re: Your Request for Informal Assistance
Our File No. I-05-148

Dear Mr. Matuoka:

This letter is in response to your request for advice regarding the filing of statements of economic interests ("SEIs") under the conflict-of-interest code provisions of the Political Reform Act (the "Act")[1]. Your request involves three former entities, the duties of which you indicate have been consolidated into the state's new Department of Technical Services ("DTS") to be overseen by the new Technology Services Board ("TSB"). The three former entities were the Stephen P. Teale Data Center ("Teale Data Center"), the Health and Human Services Data Center ("HHS Data Center"), and the Department of General Services' Office of Network Services ("DGS Office of Network Services").

The Fair Political Practices Commission ("Commission") does not act as a finder of fact when providing assistance; this assistance is based solely on the facts you provide. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because you have not provided sufficient and/or specific information concerning the various job duties of those transferring from former technical service entities to the new DTS, we are providing you with general advice and are treating your request as one for informal assistance.[2]

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[1] Government Code sections 81000 – 91014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations. All further references to statutory "sections" will be to the Government Code and all further references to "regulations" will be to title 2 of the California Code of Regulations, unless otherwise indicated.

[2] Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Reg. 18329(c)(3), copy enclosed.)

QUESTIONS

1. Is a new Conflict of Interest Code required for DTS?

2. If the advice for question number 1 above is "yes," what time frame will DTS be allowed for the creation of a new conflict-of-interest code?

3. Will current non-board DTS employees, who were required to file SEIs at their prior departments, be required to file leaving office statements with their former agencies, and then file assuming office statements with DTS?

4. If the advice for question number 3 above is "yes," what time frame will be allowed for DTS staff to file the leaving/assuming office statements?

5. If the staff in number 3 above are required to file leaving/assuming office statements, do they also have to file new SEIs with DTS?

6. If the advice to number 5 above is "yes," within what time frame is DTS staff required to file the new statements?

7. TSB members are at Agency Secretary or Department Director level and do not require Senate confirmation for their appointment to this board. Even though DTS currently does not have a Conflict of Interest Code, under which which Conflict of Interest Code do the board members file?

8. Within what time period are the board members required to file SEIs?

9. Which governmental entity is responsible for filing SEIs for each board member?

10. Will the Commission extend a grace period for non-board DTS staff members who currently file SEIs from filing any leaving office statements and/or new SEIs until the FPPC renders its advice in this request for advice?

CONCLUSIONS

1. Yes, a new Conflict of Interest Code will be required for DTS.

2. DTS has six months from the effective date of its creation to submit a conflict-of-interest code to the Commission for approval or revisions.

3. It depends. Non-board member public officials, transferring from a former consolidating agency to DTS, but with no material change in job duties, should continue to file annual statements under the old conflict-of-interest code for their former agency until DTS has a code that satisfies the requirements of the Act. You have stated that "[i]t

is not possible, at this time, to identify which staff functions and responsibilities will change, how staff functions and responsibilities may be redirected, or which employees will be affected by such changes." Therefore, we cannot and do not advise in this letter whether any specific official has experienced a change in his or her duties altering the official's filing requirements under the Act.

4. See response to question No. 3, above. If you determine that a non-board member public official has a material change in job duties, that person must file a new statement once DTS's conflict-of-interest code is in force. Such a person would only be obliged to file an initial statement sometime after DTS has adopted and promulgated its own conflict-of-interest code.

5. See response to question No.s 3 & 4, above. Staff required to file initial statements must file with DTS 30 days after the effective date of the new agency's conflict-of-interest code.

6. See response to question No.s 3 through 5, above.

7. Except for the Controller, TSB members are required to file new, full-disclosure statements, pursuant to section 87302.6 until DTS has an approved code. This holds true even if a TSB member previously sat on the board of one of the former consolidated agencies and had less than full disclosure.

8. Since TSB members do not require Senate confirmation, they must file SEIs within 30 days of assuming office.

9. SEIs for TSB members must be filed with the Commission.

10. The FPPC does not possess the power to extend a grace period for non-board DTS staff members who currently file SEIs from filing any leaving office statements and/or new SEIs until the FPPC renders its advice in this request for advice.

FACTS

You state that July 11, 2005 was the effective date upon which the Teale Data Center, HHS Data Center, and DGS Office of Network Services consolidated into the new Department of Technology Services ("DTS"). You state that the three consolidated entities, which no longer exist, were physically located at three different locations which will now be referred to, respectively, as the "Gold Camp Campus," the "Cannery Campus," and the "Sequoia Pacific Campus." The new DTS is a department within the State and Consumer Services Agency.

This action was directed by Executive Order S-13-04 and the "Governor's Reorganization Plan 2, Technology Reorganization" ("GRP") to more efficiently serve the common technology needs of state governmental entities. The GRP also mandated

creation of the Technology Services Board ("TSB") to oversee DTS. Assembly Bill 53 ("AB 53") directs the consolidation of Teale Data Center with HHS Data Center.

The TSB was created with the responsibility of providing oversight and approval of the DTS budget, rate setting, and plan of operations. The TSB consists of 13 members, including: (1) the Governor's designee; (2) the Director of Finance; (3) the State Controller; (4) – (13) the Secretaries of the: Department of Food and Agriculture; Business, Transportation and Housing agency; Environmental Protection Agency; Health and Human Services Agency; Labor and Workforce Development Agency; Resources Agency; State and Consumer Services Agency; Department of Veteran's Affairs; and Department of Corrections and Rehabilitation; and the Director of the Office of Emergency Services.

The merger and integration of DTS staff is scheduled to occur in phases. Staffing for the previous entities, Teale Data Center, HHS Data Center, and DGS Office of Network Services, consisted of approximately 512, 400, and 52 positions, respectively. You state that as a result, DTS is staffed by approximately 800 filled positions.

You state that the first phase of the integration will be that of the Executive and Administration Divisions at the Gold Camp Campus (former Teale Data Center) and the Cannery Campus (former HHS Data Center). You state that the DTS organization chart will change in September 2005, to reflect the integration of the Executive and Administration Divisions, and will be revised several times thereafter. You also write:

> "Concurrent with the integration of Executive and Administrative Divisions, integration of staff, staff functions and responsibilities will be occurring, particularly where the Gold Camp and Cannery Campuses have staff performing the same or similar functions. A determination will be made as to whether the subject staff remains critical to the operation of DTS or whether fewer staff can be utilized, with a redirection of the excess staff. **Integration of staff and staff functions will result in changes to employees' reporting responsibilities under conflict of interest guidelines. It is not possible, at this time, to identify which staff functions and responsibilities will change, how staff functions and responsibilities may be redirected, or which employees will be affected by such changes. It is expected, however, that these changes will result in new DTS staff falling within old disclosure categories previously in place at their respective campuses prior to July 11, 2005**, resulting in the need to file a statement of economic interest form (SEI).
>
> "**Additionally, duty statements cannot be produced until after each phase of integration is completed. Several staff members will be experiencing changes to their duties and reporting requirements.** Employees who were not previously required to file

> may be required to file an SEI after integration of their division is completed, or employees who were required to file previously may no longer be required to file after integration of their division is completed. The uncertainty of staff placement in final organization of DTS will create difficulty in defining a new conflict of interest code. It is estimated, however, that only 23 percent of the DTS' 800 staff members are currently required to file SEIs." (Emphasis added.)

Consequently, you provide no information regarding what if any former agency, non-board positions: (1) are going to remain the same under DTS; (2) are going to change slightly or significantly; or (3) are going to be completely eliminated.

ANALYSIS

A. General Laws Under The Act Regarding Conflict-Of-Interest Codes And Filing Obligations

One of the purposes of the Act is to ensure that public officials disclose their economic interests. (Section 81002(c).) Public officials who make or participate in the making of governmental decisions are required to file statements of economic interests whereby they disclose information regarding their economic interests. (See sections 87200 et seq. and 87300 et seq.)

The first category of filers, governed by sections 87200 et seq., includes most high-ranking elected officeholders. These 87200 filers (sometimes referred to as "statutory filers") include, for example, elected state officers, judges, members of certain state commissions, heads of local governments, those who manage public investments, and candidates for any of the elected offices in this category. These officials are subject to the most expansive disclosure requirements possible under the Act due to the nature of their duties.

The second category of filers, governed by sections 87300 et seq., covers all other positions in an agency "which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. . . ." (Section 87302(a).) People holding these positions are informally referred to as "designated employees" and their positions are listed in conflict of interest codes, which most governmental agencies are required to adopt and promulgate. (Section 87300; see section 82019 [defining "designated employee"].) Unlike most high-ranking officials, many designated employees are required to make only limited disclosures of their economic interests, depending upon the duties associated with their positions. These positions, and their respective disclosure requirements, are listed in each agency's conflict of interest code.

Members of many boards and commissions typically fall under "designated employee" category of filers and therefore file pursuant to sections 87300 et seq. But

such members, when taking a seat on the board of a newly created agency, must file like section 87200 filers (i.e., full disclosure without exception) until the new agency creates and adopts an approved conflict-of-interest code. (Section 87302.6.) Once a code is adopted for a newly created agency, such members then file SEIs according to the new code, pursuant to section 87302. Public officials of new agencies that are not members of the new agency's board or commission are simply obligated to file SEIs once their agency has adopted an approved conflict-of-interest code (which usually happens several months after a new agency is created).

Generally, new agencies have six months to adopt a code. (Section 87303.) On the other hand, agencies which experience changed circumstances must amend their codes within 90 days. (Section 87306.)

B. Filing Obligations Of Public Officials Moving To DTS

It is difficult for us to answer questions about the filing obligations of non-board member public officials moving from a former entity being consolidated under the new DTS, unless we know something about whether their duties are changing. But we can answer the following inquiry: whether non-board member public officials of a reorganized agency must file leaving office (and assuming office) statements when it is expected that a portion of "new DTS staff [will be] falling within old disclosure categories" covered in the conflict-of-interest code of the prior-existing entities.[3] (Note: The following discussion does not pertain to those few public officials who are members of the governing board of DTS; such officials will be dealt with in Section C of this letter, below.)

The answer generally depends upon whether the reorganized agency is considered to be a new agency that has no approved conflict-of-interest code. If the answer is no, the officials may continue to file annual statements and no leaving or assuming office statements would be required.

If the answer is yes, these officials generally have to file a leaving office statement (at the old agency) and an initial statement (at the new agency) after a new conflict-of-interest code for the new agency is adopted. Under the Act, the new agency has six months to submit an approved code, after which its code reviewing body has another 90 days to accept it or revise it, and then to either approve it as revised, or send it back to the new agency for further revisions. (Section 87303.) In the meantime, the officials, now at the new agency, are not covered by a conflict-of-interest code.

Based on the facts you have provided (e.g., describing the end of certain agencies under their former names) it appears that there is a new agency. This means that under normal circumstances, the officials moving from their abolished, old entities to DTS would have to file leaving office statements and, after a conflict-of-interest code is developed, an initial statement. However, provisions contained within the legislation and

[3] See generally, *Duveneck* Advice Letter, No. A-05-133.

executive order consolidating the former entities under the new DTS may change this result.

The legislation creating the new DTS (Assembly Bill "AB" 53) adds a new section (§ 7090) to the Government Code which states:

> "(a) It is the intent of the Legislature in enacting this act to implement the recommendations of the Legislature embodied in the Annual Budget Act of 2003 with respect to the consolidation of the Teale Data Center and the California Health and Human Services Data Center.
>
> "(b) The Department of Technology Services is hereby created in state government and shall be comprised of **the Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center, which are hereby consolidated and their functions transferred to the department**.
>
> "(c) **The department is the successor to, and is vested with, all of the duties, powers, purposes, responsibilities, and jurisdiction of the Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center**. Any reference in statutes, regulations, or contracts to those entities with respect to the transferred functions of these two data centers shall be construed to refer to the Department of Technology Services unless the context clearly requires otherwise.
>
> "(d) No contract, lease, license, or any other agreement to which the Stephen P. Teale Data Center or the California Health and Human Services Agency Data Center, is a party shall be void or voidable by reason of this chapter, but shall continue in full force and effect, with the department assuming all of the rights, obligations, and duties of the Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center.
>
> "(e) All books, documents, records, and property of the Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center shall be transferred to the Department of Technology Services.
>
> "(f)(1) **All officers and employees** of the former Stephen P. Teale Data Center and the California Health and Human Services Agency Data Center **are transferred to the department**.
>
> "(2) **The status, position, and rights of any officer or employee of the Stephen P. Teale Data Center or the California Health and**

> **Human Services Agency Data Center shall not be affected by the consolidation and transfer of these two centers to the department**." (Emphasis added.)

The language set forth in section 7090 is mirrored in the GRP, but expands the consolidation language to not only cover the Teale Date Center and the HHS Data Center, but also the "business telecommunications systems and services functions of the Telecommunications Division of the Department of General Services. . . ." (Section 11542 [added by GRP Plan No. 2 of 2005, dated May 9, 2005].) This third entity is referred to in your letter as the DGS Office of Network Services.

If section 7090 (added by AB 53) and section 11542 (of the GRP) can be harmonized with the general provisions of the Act, which dictate the filing obligations of officials, such officials could simply continue filing annual SEIs under their old entities' conflict-of-interest codes until the DTS promulgates its own conflict-of-interest code.

When faced with an apparent conflict of statutory authority, one court provided the following guiding principles: (1) ascertain the intent of the Legislature in drafting the law at issue; (2) give the law a reasonable and common sense meaning consistent with its apparent purpose, so as to serve a wise policy and to avoid absurd results; (3) give significance to every word or part, and harmonize the parts by considering them in the context of the whole; (4) consider context, object in view, evils to be remedied, legislation on the same subject, public policy, and contemporaneous construction; and (5) pursue consistent construction. (*DeYoung v. San Diego* (1983) 147 Cal.App.3d 11, 17; see Witkin's *Summary of California Law* (9th Ed.) Vol. 7 "Constitutional Law" § 94.)

In applying the above principles, we find that sections 7090 and 11542 of the legislation creating the new DTS should govern and non-board member public officials, continuing in similar jobs at the new agency, should simply continue to file SEIs pursuant to the conflict-of-interest code which covered them at their old agencies. First, the words "consolidate" and "transfer" (or variations thereon) figure prominently in the legislation creating the DTS, indicating a continuation (as opposed to an abolishment) of the work done by the former entities. Second, under the Act's statements of purposes, assets and income of public officials which may be materially affected by their official actions should be disclosed so as to facilitate the avoidance of conflicts of interest. (Section 81002(c).) One of the best ways to achieve this purpose, particularly during times of transition in governmental organizations, is to make sure there is as little gap in filing obligations as possible.

According to the precepts of statutory construction stated above, we may harmonize the apparently contradictory statutory directives by considering them in the context of the whole. Under the specific circumstances presented here, we believe that we should treat the old entities' conflict-of-interest codes as still in effect (based upon the authority of new sections 7090 and 11542). If any officials have duties at DTS that are materially similar to those duties they had at their former agencies or departments, they should continue to file annual SEIs under their old conflict-of-interest codes (and

pursuant to 87302) until DTS promulgates a new conflict-of-interest code. (*Duveneck* Advice Letter, No. A-05-133.) Such an approach ensures there is a reduced gap in reporting by existing employees with similar duties. If an old entity were treated as having no existing code, leaving office statements would be required but no assuming or annual statements would be due for the several months until the new code was adopted.[4] This conclusion furthers the purposes of the Act and meets with the goals of sections 87300-87312.

You have not provided any details regarding whether certain designated positions under the old conflict-of-interest codes generally match positions in the new agency. Therefore, this letter does not provide advice regarding the specific filing obligations of any particular employee. Generally, persons holding positions enumerated in a code have been determined to make or participate in the making of decisions which may foreseeably have a material effect on their economic interests. (See regulation 18730(b)(2).) You should make these determinations and then have the non-board member designated employees with materially similar duties continue filing SEIs under their old conflict-of-interest code until the new DTS has an approved code. These officials would not have to file leaving office or initial statements.

If you determine the duties of the new positions materially differ, then new positions have been created and, pursuant to section 87306, you have 90 days to submit a new code that encompasses all positions to ensure there is disclosure by officials holding the new positions.[5]

C. Filing Obligation Of The New TS Board Members

Your facts also present a unique question with respect to those public officials that are members of boards or commissions of newly created agencies which consolidate the functions of one or more entities. One issue is whether their disclosure obligations could continue on an annual basis under the old entities' conflict-of-interest codes (just as those designated employees discussed above) or whether such board members would have to file anew.

Section 87302.6 was specifically enacted (SB 1620, Stats. 2002, Chapter 263) to ensure that members of the boards or commissions of newly created agencies have full and timely disclosure, without having to wait for the new agencies to adopt a new conflict-of-interest code. That section states:

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[4] As noted, generally under section 87303 an agency has six months to adopt a code.

[5] Although section 87306 generally applies to codes that have already been adopted, under the unique circumstances of this reorganization, we apply the 90-day deadline to DTS, as opposed to the six-month deadline of section 87303. We believe this effectuates the purposes of the Act. (See section 81002(c).) Application of the six-month deadline under section 87303 would mean employees of the old agencies would have to file leaving office statements, but it would create a gap in reporting since assuming office statements would not be filed by any employee until the new DTS code is submitted and approved.

"Disclosure by Members of Boards and Commissions of Newly Created Agencies

> "Notwithstanding Section 87302, a member of a board or commission of a newly created agency shall file a statement at the same time and in the same manner as those individuals required to file pursuant to Section 87200. A member shall file his or her statement pursuant to Section 87302 once the agency adopts an approved conflict-of-interest code."

This section has been further interpreted in regulation 18754. Together, section 87302.6 and regulation 18754 impose an interim financial disclosure obligation requiring a member of a board or commission of a newly created agency to file an SEI, at the same time and in the same manner as those individuals required to file pursuant to section 87200 of the Act, until the agency adopts an approved conflict-of-interest code.

Therefore, the question becomes: should board or commission members switching from the board or commission of a former entity, e.g., the Teale Data Center, to a new agency, e.g., DTS, be able to continue to file annually under Teale's old conflict-of-interest code? Or should such members be obligated to file anew under section 87302.6, regardless of whether the legislation creating the new agency (e.g., sections 7090 and 11542) states that the new agency is the successor to the old entities in terms of duties, powers, purposes, responsibilities and jurisdiction? To answer this question, we look not only to the plain words of section 87302.6, but to evidence of the Legislature's intent behind the enacting of this legislation.

The analysis drafted by the Assembly Committee on Elections, Reapportionment and Constitutional Amendments explains SB 1620, the bill creating 87302.6, as follows:

> "Under current law, it is possible that a person can serve on a new agency, board or commission and make decisions on rules, regulations, permits, and contracts for almost a year before they are required to file a Statement of Economic Interests (SEI) . . . SB 1620 will . . . require all newly appointed persons to state boards or commissions [to] file a Statement of Economic Interests according to [the requirements of the PRA] until the Agency adopts an approved conflict of interest code. The filing of SEI forms by members of new agencies, boards or commissions is critical, especially when many of the laws creating these boards have specific prohibitions against members who have had financial or other related dealings with the industry it oversees and regulates."

Considering the stated intent for the creation of section 87302.6, and in light of the general principles of statutory construction delineated above, we conclude that all

members of the TSB should file new, full disclosure SEIs pursuant to 87302.6.[6] We believe that when you harmonize sections 87300-87312 with the legislation creating the DTS and the TSB, and consider the general purposes of the Act, this is the correct conclusion. This means that any member of the TSB, not subject to Senate confirmation, has a duty to file no more than 30 days after appointment or nomination. (Regulation 18754(b)(1)(B).)[7] However, this does not apply to the State Controller because he or she is a filer under section 87200.

D. Summary Of Conclusions

Non-board member public officials, transferring from one of the three named consolidated entities to the DTS but with no material change in job duties, should continue to file annual statements under the old conflict-of-interest code for their prior entity until the DTS has an approved code. Board members of the new TSB should file new, full-disclosure SEIs pursuant to section 87302.6. Finally, the DTS has 90 days from the creation of new positions (new or different from the positions enumerated in the old entities' codes) to submit a conflict-of-interest code to the Commission for approval.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Andreas C. Rockas
Staff Counsel, Legal Division

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[6] Moreover, under the provisions of the GRP, it is not unlikely that the composition of the new TSB (13 members) is going to be different from the boards of the three former entities being consolidated. Ultimately, though, we have no information regarding the composition or the old governing boards to make that determination.

[7] Members subject to Senate confirmation have only 10 days after assuming office to file their SEIs. (Section 87202.)